

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MIDAMERICAN ENERGY COMPANY	DOCKET NO. P-844
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**ORDER AFFIRMING AND MODIFYING PROPOSED DECISION AND ORDER  
GRANTING PERMIT**

(Issued December 4, 2002)

**APPEARANCES:**

ROBERT P. JARED, Senior Attorney, MidAmerican Energy Company, 106 East Second St., Davenport, Iowa 52808.

JAMES R. MONROE, Attorney at Law, P.O. Box 41355, Des Moines, Iowa 50311, appearing on behalf of Kenneth R. Silver and Harold K. Silver.

CATHERINE S. KILE, 5790 NE 57<sup>th</sup> Ave, Altoona, Iowa 50009, appearing pro se.

DAN FOGLEMAN, 5330 Susan Ct., Pleasant Hill, Iowa 50327, appearing pro se.

KEN AND AMBER WILLIAMSON, 4012 NE 62<sup>nd</sup> AVE, Ankeny, Iowa 50021, appearing pro se.

CRAIG F. GRAZIANO, Attorney, Consumer Advocate Division of the Department of Justice, 310 Maple St., Des Moines, Iowa 50319.

**I. PROCEDURAL HISTORY**

On January 31, 2002, MidAmerican Energy Company (MidAmerican) filed a petition requesting that the Utilities Board (Board) issue a permit to construct, operate, and maintain a new natural gas pipeline. The proposed pipeline will consist of 12.9 miles of 16-inch diameter pipeline and transport natural gas from a Northern

Natural Gas Company (Northern) pipeline at a connection point east of Ankeny, Iowa, to MidAmerican's Pleasant Hill Energy Center and the proposed Greater Des Moines Energy Center (GDMEC). The two energy centers are located south of the city of Pleasant Hill in Polk County, Iowa. MidAmerican has amended its petition on several occasions since January 31, 2002. The petition was identified as Docket No. P-844.

The Board issued an order on May 9, 2002, assigning the petition to a presiding officer to establish a procedural schedule, set a hearing date, and to conduct proceedings. On May 22, 2002, the presiding officer issued an order establishing a procedural schedule and scheduling a hearing. The presiding officer conducted the proceedings as scheduled and on September 25, 2002, issued a "Proposed Decision and Order Granting Permit" approving the pipeline.

Appeals were filed to the proposed decision by Dan Fogleman, Ken and Amber Williamson (the Williamsons), and Kenneth R. Silver and Harold K. Silver (the Silvers). Responses to the appeals were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and MidAmerican. The Silvers requested oral argument on the issues they raised.

On October 28, 2002, the Board issued an order establishing the issues to be decided on appeal, setting a date for filing briefs, and denying the request for oral argument. On November 4, 2002, the Board extended the date for filing briefs in response to a motion filed by the Silvers. Briefs have been filed by Mr. Fogleman, the Silvers, Catherine S. Kile, and MidAmerican. On November 19, 2002, the Williamsons filed a notice of withdrawal of their appeal.

Iowa Code § 476.15(3) provides that on appeal from the proposed decision of a presiding officer the Board has all of the power that it would have had if it had initially conducted the hearing, except that it may limit the issues to be decided. The Board may then reverse or modify any finding of fact based upon the preponderance of evidence and may reverse or modify any conclusion of law that the Board finds is in error. In the October 28, 2002, order, the Board set out the issues to be decided on appeal. Those issues will be addressed below.

## **II. ISSUES TO BE DECIDED ON APPEAL**

- 1. Whether the decision to change the route after the informational meeting was based upon factors other than engineering concerns or costs of the route proposed at the informational meeting, such as the relationship of one of the landowners along the original route to MidAmerican.**

On November 19, 2002, the Williamsons withdrew their objection and notice of appeal. Counsel for MidAmerican also has indicated that the Williamsons have signed a voluntary easement. Therefore, this issue is moot.

- 2. Whether MidAmerican has complied with the "Proposed Decision and Order Granting Permit" in relocating the pipeline on the Williamson's east property line.**

On November 19, 2002, the Williamsons withdrew their objection and notice of appeal. Counsel for MidAmerican has also indicated that the Williamsons have signed a voluntary easement. Therefore, this issue is moot.

- 3. Whether MidAmerican has negotiated in good faith with the Williamsons.**

On November 19, 2002, the Williamsons withdrew their objection and notice of appeal. Counsel for MidAmerican has also indicated that the Williamsons have signed a voluntary easement. Therefore, this issue is moot.

**4. Whether there is competent and substantial evidence to support the findings of the presiding officer or whether the record should be reopened for further evidence.**

In their notice of appeal filed October 9, 2002, the Silvers raised issues concerning the evidence presented by MidAmerican with regard to the Direct Route, the Secondary Route, and the Highway 65 Corridor Route. The Silvers did not address any issues concerning the Highway 65 Corridor Route in their brief. They did address the evidence concerning the Direct and Secondary Routes. The Board will address the Direct versus the Secondary Route in this section and the remainder of the Direct Route in Section II.5 below.

The Silvers' property is located north of the point where the Highway 65 Corridor Route and the Direct Route separate and the Silvers' property would not be affected by the decision of whether the pipeline should follow the Direct Route or the Highway 65 Corridor Route. The Silvers are contending that the proposed pipeline should be constructed along the Secondary Route rather than over their property on the Direct Route. Exhibit J shows the location of all of the routes considered by MidAmerican, including the Direct Route, the Secondary Route, and the Highway 65 Corridor Route.

The Silvers' are contending the Secondary Route, which would be constructed east of their property, should have been selected for the pipeline. The Silvers argue that MidAmerican introduced no evidence, except length of route, which would compare the Direct Route with the Secondary Route. Without a complete analysis, the Silvers assert that it is impossible for MidAmerican and the presiding officer to evaluate the economics of the Secondary Route. In addition, the Silvers contend

there is no evidence of a full evaluation of the disruption of productive Iowa farm land, the permanent taking of farm land from farm use, the economic impact of the taking, the difference in terrain between the Direct Route and the Secondary Route, and the number of bends in the Direct Route. The Silvers argue that the record should be reopened to allow for additional testimony because the presiding officer failed to compare all factors concerning the Secondary Route with the Direct Route.

MidAmerican argues that the evidence shows that MidAmerican used five criteria to evaluate the alternative routes and that the Direct Route was the best route based upon those criteria. MidAmerican contends the record fully supports the proposed decision and no party has demonstrated that any further evidence or argument is necessary.

A review of the proposed decision shows that the Secondary Route was addressed by the presiding officer in sections III.A and III.B. The issues raised by the Silvers concerning the Direct Route were analyzed in section III.B.1(16), and section III.B.5. In the analysis of the issues presented in section III.B, however, the presiding officer did not separately compare the Secondary Route and the Direct Route. The presiding officer did address whether the Direct Route can be modified so that it crosses the Silvers' land in another location. Since the presiding officer did not provide an analysis of the Secondary Route separate from the discussion of the Direct Route, the Board will provide that analysis.

The Secondary Route would begin at the Northern town border station and extend directly east for two miles parallel to the Northern interstate pipeline. The Secondary Route would then turn south, cross farmland, and then cross

Interstate 80. South of Interstate 80, the Secondary Route would join with the remainder of the Direct Route.

MidAmerican evaluated the different routes based upon five criteria: safety of the general public, use of existing utility and highway corridors, pipeline length, construction costs, and environmental impact. The evidence indicates that the Secondary Route provided no real advantage over the Direct Route for safety or environment and it would cost significantly more than the Direct Route. Exhibit F, revised on March 27, 2002, provides a cost analysis of the Direct Route and the Secondary Route. The analysis shows that the Secondary Route would be more expensive to construct than the Direct Route. The higher cost of the Secondary Route is primarily the result of the additional length of the pipeline and the increase in pipe diameter caused by that additional length. The increase in pipe diameter is to compensate for pressure loss over the longer pipeline.

During cross-examination, Harold K. Silver asked Mr. Dreesman about constructing the proposed pipeline within or along the Williams Pipeline Corridor. The Williams Pipeline Corridor runs parallel to the north and south portion of the Secondary Route. Mr. Dreesman stated that constructing the proposed pipeline was not an option because the corridor was already full. Exhibit F, revised March 27, 2002, also indicates that use of the corridor was investigated, but not chosen, since additional space was not available.

The Board finds that the evidence supports the selection of the Direct Route over the Secondary Route based upon the five criteria used by MidAmerican. There appears to be no advantage to the Secondary Route and it would cost significantly

more without any offsetting benefit. The Board finds that the preponderance of the evidence concerning the Secondary Route does not support the reversal or modification of the presiding officer's findings that selection of the Direct Route was reasonable.

The Silvers also contend there is no evidence of a full evaluation of the disruption of the pipeline to Iowa farmland. The Board rules in 199 IAC chapter 9 provide standards for the restoration of agricultural lands during and after pipeline construction. MidAmerican has filed a land restoration plan for this project and the presiding officer determined the plan to be in compliance with Board rules.

The Board finds that the evidence in the record supports the findings of the presiding officer that the land restoration plan complies with the Board's rules. The land restoration plan does not address how MidAmerican will comply with the requirements in the plan while constructing the pipeline during the winter months. Since MidAmerican apparently will be constructing most of the pipeline during the winter, the Board will require MidAmerican to file an addendum to the plan that describes how it will meet the plan requirements for segregating topsoil and restoring topsoil when the ground is frozen.

The preponderance of the evidence demonstrates that MidAmerican has complied with the Board's land restoration rules and the evidence does not support the reversal or modification of the presiding officer's decision that the selection of the Direct Route was reasonable.

**5. Whether the dangers of placing a high-pressure natural gas pipeline within the same corridor as a high voltage electric transmission line were properly considered.**

The Board in the October 28, 2002, order indicated that this issue would be considered with the Silvers' issue regarding the evidentiary support for the decision. As discussed in II.4 above, the Board will address the selection of the Direct Route instead of the Highway 65 Corridor Route and the use of the electric transmission line corridor in this section since the Silvers' brief only addressed the comparison of the Secondary Route and the Direct Route. The proposed pipeline route will run parallel to a high voltage electric transmission line for a distance of five miles. The electric transmission line corridor runs through the city of Pleasant Hill.

Mr. Fogleman is a resident of Pleasant Hill, Iowa, but does not have property that will be crossed by the pipeline. Mr. Fogleman argues that there can be no assurance that the safety of people living near a pipeline will be protected from an accident on a natural gas pipeline. Mr. Fogleman argues that the effect of any gas leak, fire, or explosion will likely be compounded by the presence of overhead high-voltage electrical transmission wires as the electric lines provide another source of combustion. Mr. Fogleman asserts that routing a pipeline under a high voltage transmission line is not prudent when the Highway 65 Corridor Route would be safer. The Highway 65 Corridor Route would not be exposed to the danger of toppling high voltage towers as well as natural gas explosions.

MidAmerican asserts there is no showing that there are dangers associated with the placement of the pipeline in the electric transmission line corridor. The



record shows that placing the pipeline within the electric transmission line corridor is not unusual and poses no special dangers.

The evidence shows that the proposed pipeline is necessary to provide natural gas service to the new GDMEC and the existing Pleasant Hill Energy Center and promotes the public convenience and necessity. The pipeline complies with construction, safety and design requirements of Iowa Code chapter 479, 199 IAC 10.12, 49 C.F.R. Part 192, and ASME B31.8. Additionally, MidAmerican has agreed to several safety enhancements for the Direct Route that exceed minimum safety standards. These enhancements are part of the findings of fact made by the presiding officer. The safety enhancements are:

(1) The pipe used in construction will be at least 0.375-inch wall thickness in residential areas.

(2) The pipe will be buried with at least five feet of cover in agriculture and residential areas in Pleasant Hill.

(3) MidAmerican will x-ray 100 percent of field welds.

(4) A remote operated shutdown valve will be installed at the transfer point with Northern.

(5) Marking tape will be buried above the pipeline in the trench within Pleasant Hill.

(6) The natural gas will be odorized at the point it is transferred from Northern to MidAmerican.

(7) The entire pipeline will be designed to Class Location 3 requirements.

(8) MidAmerican will leak survey the pipeline four times per year in the residential areas of Pleasant Hill.

(9) MidAmerican will continuously monitor the pipeline flow rate and pressure of the pipeline.

(10) MidAmerican will provide emergency response training to local emergency responders and

(11) and coordinate training with other pipeline operators in Pleasant Hill.

(11) MidAmerican will provide informational brochures and conduct meetings with local residents to inform them of gas safety issues and also promote awareness.

(12) The pipeline will have a maximum allowable operating pressure of 800 psig.

The evidence also shows that placing the pipeline near an electric transmission line is an accepted practice and not considered hazardous. A pipeline near an electric transmission line, though, must be protected against the possibility of an AC fault current or lightning strike on the electric line and against the possibility that the electric line might induce electrical currents. The pipeline must also be protected against charges on the pipeline that might harm persons who contact the pipeline or that might damage the corrosion control facilities on the pipeline. The record shows MidAmerican has taken the necessary steps to protect the pipeline and persons who contact the pipeline, and will be in compliance with the applicable standards regarding pipelines near electric transmission lines.

Additionally, the presiding officer found that the construction of the pipeline within the existing electric transmission corridor makes the route less objectionable since there are existing restrictions on development within the corridor. This contrasts with the Highway 65 Corridor Route where there will be increased development and increased possibility of damage to the pipeline.

The Board finds that the preponderance of the evidence does not support reversal or modification of the presiding officer's findings that the Direct Route is reasonable.

**6. Whether the proposed order properly evaluated the protection of the safety and welfare of the public as required by Iowa Code § 479.1.**

On appeal of the "Proposed Decision and Order Granting Permit," Mr. Fogleman argues that the "will of the public" was not considered by the presiding officer. Mr. Fogleman points out that he filed a petition containing over 300 signatures of those opposing the natural gas pipeline being constructed along the existing electric transmission line corridor and thus through the city of Pleasant Hill. Mr. Fogleman argues that he and those who signed the petition object to the pipeline because it goes through a residential area and any explosion along the pipeline in this area could be catastrophic.

In his brief Mr. Fogleman argues that there is no guarantee that an accidental explosion, or one caused intentionally, will not occur. Mr. Fogleman then suggests that a natural gas pipeline should not be constructed in a residential area and in this instance MidAmerican had a suitable alternative route along the east side of the Highway 65 Corridor.

MidAmerican supports the proposed decision and argues that all safety standards have been met and in many cases substantially exceeded. MidAmerican points to expert witness testimony that the additional safety measures to be taken by MidAmerican substantially enhance the safety of the pipeline. These safety measures include the depth of the pipeline, the thickness of the pipe to be installed, an increased number of leak surveys, constant monitoring of gas flow in the pipeline, a remote operated valve, marking tape buried above the pipeline, and training local emergency personnel. MidAmerican argues that the proposed decision correctly finds that these measures are sufficient to ensure that the pipeline meets or exceeds all safety requirements.

The presiding officer did not address the public interest as a separate factor but did address the location of the pipeline and compared the safety of the route through Pleasant Hill with the Highway 65 Route. The presiding officer found that “the evidence in the record in this case does not support a finding that the Highway 65 Corridor Route would be safer” than the Direct Route. The presiding officer then found that the evidence supported a finding that the Direct Route is at least as safe as the Highway 65 Corridor Route and that the Highway 65 Corridor Route would become less safe as the area along the east side of Highway 65 develops. The presiding officer found that the safety enhancements committed to by MidAmerican for the Direct Route made the pipeline at least as safe, if not more safe, as pipeline constructed along the Highway 65 Corridor Route and that the “preponderance of the evidence in the record does not provide a basis to find that MidAmerican should be

required to use the Highway 65 Corridor Route because the Direct Route is currently more populated.” The safety enhancements are listed in Section II.5 above.

The Board recognizes that safety is a significant consideration when reviewing an application for a permit to build a natural gas pipeline and it may be the determinative consideration in most instances. In this case an issue of the public welfare has been raised and that requires a separate consideration of whether it is in the public interest to build a natural gas pipeline through the city of Pleasant Hill.

Iowa Code chapter 479 confers on the Board the authority and power to protect the safety and welfare of the public with regard to the transportation or transmission of any solid, liquid, or gaseous substance within Iowa. The consideration of the safety and welfare of the public involves a determination concerning whether the pipeline as proposed is in the public interest.

The consideration of the public interest in pipeline permit applications does not appear to have been addressed by an Iowa court. There are decisions from other jurisdictions where similar statutory requirements are construed. In those decisions the courts have distinguished between the requirement that a pipeline permit is “not against the public interest” from the requirements for a finding that the pipeline “will promote the convenience and necessity.” Paulson V. Schermer Transportation Company, 81 N.W.2d 875 (MN 1957). The court in the Paulson case said that the “public interest” necessarily has reference to the inherently hazardous character of the commodity involved and comprehends the concerns and interests of the public. Paulson, 81 N.W.2d at 882.

The North Dakota Supreme Court held that the “public interest” means more than mere public curiosity and must be a matter involved in which the public, the community at large, has an interest or right that may be affected. Burgum v. North Dakota Hospital Service Association, 106 N.W.2d 545, 547 (ND 1960).

There is no question that the construction through a populated area involves a matter in which the public has a right and interest that may be affected. The issue then is whether the affected right or interest of those opposing the pipeline outweighs the other considerations involved in determining the public interest. Several factors that the Board considers in determining whether a pipeline is in the public interest are the safety of the proposed pipeline, the necessity of the proposed pipeline, the effect of the construction on the community through which the pipeline will pass, the cost of the pipeline, and the effect of a modification or denial of the pipeline on the public as a whole. Based upon these factors, the Board finds that the proposed pipeline is in the public interest and no modification of the presiding officer’s findings are necessary.

As discussed above, the Board has found that the presiding officer’s findings that the pipeline meets existing safety standards and has additional enhancements is supported by the preponderance of evidence in the record. The evidence shows that MidAmerican has not only met existing safety standards for constructing a natural gas pipeline, but has agreed to additional requirements to enhance the safety of the operation of the pipeline. The presiding officer found that the pipeline would promote the public convenience and necessity as required by Iowa Code § 479.12 in Finding Of Fact No. 4. The pipeline will provide natural gas service to the GDMEC, which will

provide electric power to the entire Des Moines area, additional reliability for the existing system, and power for future growth.

A natural gas pipeline involves the transportation of an inherently hazardous substance. It is in the public interest to limit the potential for an explosion of the pipeline, whether accidental or intentional, and the resulting harm to members of the public. If there were no other considerations, a natural gas pipeline should not be constructed in a residential community. This pipeline, though, will need to be constructed to provide an adequate source of natural gas to the GDMEC. The GDMEC will provide reliable electric service to support economic development and growing peak day demand. There is an overriding public interest in the construction of this pipeline to serve the GDMEC.

The Board finds that the presiding officer's findings that the Direct Route is at least as safe as the Highway 65 Corridor Route are supported by the preponderance of the evidence. Although the Direct Route will be constructed through an existing populated area, the Highway 65 Corridor Route is being developed and will become a populated area in the near future. The Board finds that without some other factor to make the Highway 65 Corridor more attractive, the pipeline route should not be relocated to accommodate one portion of the public when it will then affect another portion of the public equally.

The evidence does not provide any support for the proposition that the Highway 65 Corridor Route is safer or superior to the Direct Route. The Direct Route costs less, is a shorter distance, follows an existing corridor that limits encroachment, and has enhanced safety commitments from MidAmerican. Don Stursma, Safety and

Engineering Manager for the Board, testified that there were no engineering or technical benefits to using the Highway 65 Corridor Route.

Although recognizing that there is an interest in relocating the pipeline from the portion of the public who will have to live along the pipeline in Pleasant Hill, relocating the pipeline to another area that will soon be developed merely shifts any risk to another part of the public. In addition, there may be more risk to the pipeline from development activities along Highway 65 than along the electric transmission line corridor.

The Board finds that the public interest does not require that the pipeline be constructed through the Highway 65 Corridor Route. The concerns of the people living in Pleasant Hill are significant but shifting those risks to another part of the public is not in the overall public interest. The Board finds that the preponderance of the evidence does not support the reversal or modification of the proposed decision that the Direct Route is reasonable.

#### **IV. OTHER MATTERS**

##### **1. Catherine S. Kile**

Catherine S. Kile filed an objection to the pipeline and is a party to this proceeding. She did not file an appeal of the proposed decision but filed a brief. The Board has reviewed the issues raised by Ms. Kile in her brief and finds they are the same issues she raised during the proceeding. The Board finds those issues were adequately addressed by the presiding officer in the proposed decision and the Board need not address those issues in this order.



**2. Whether the route has been established definitely.**

Board rule 199 IAC 10.7 states that "[w]here proposed construction has not been established definitely, the permit will be issued on the route or location as set forth in the petition, subject to deviation of up to 160 rods on either side of the proposed route." One hundred sixty rods is one-half mile. In Mr. Stursma's April 24, 2002, report, he stated that the proposed route set forth in the petition appears to have been "established definitely" and the permissive deviation would not apply. Mr. Stursma further stated that minor adjustments to the route may be made in order to respond to unexpected conditions or landowner requests, but a deviation of up to 160 rods could negate the effort to minimize interference with future land use.

The presiding officer in the analysis in section III.B.6 found that the Direct Route had been established definitely and the 160-rod deviation in 199 IAC 10.7 should not apply. The presiding officer did not make a corresponding Finding of Fact.

In its October 22, 2002, brief, MidAmerican stated that it had continued negotiations with individual landowners on routing issues, including two parcels owned by the Ochylskis. MidAmerican maintains that as a result of the negotiations, the Ochylskis signed a voluntary easement which changed the route by less than 160 rods. MidAmerican asserts that the proposed decision could be interpreted to affect the route adjustment made in June in agreement with the Ochylskis.

The Board finds that the preponderance of the evidence does not support a reversal or modification of this presiding officer's decision on this issue. The presiding officer, though, did not make a specific finding of fact concerning this issue. The Board has determined that such a specific finding of fact is necessary. Since the

proposed decision does not contain a Finding of Fact on this issue, the proposed decision will be modified to include the following Finding of Fact:

11. The record is adequate to determine that the route proposed by MidAmerican has been established definitely, and the 160-rod deviation set forth in 199 IAC 10.7 shall not apply, although minor route adjustments to respond to unexpected conditions or landowner requests are not prohibited.

## **V. FINDINGS OF FACT**

A new Finding of Fact No. 11 is made as described in section IV.2 above.

Findings of Fact Nos. 1 through 10 are affirmed.

## **VI. CONCLUSIONS OF LAW**

The presiding officer's conclusions of law are affirmed.

## **VII. ORDERING CLAUSES**

### **IT IS THEREFORE ORDERED:**

1. The proposed decision and order issued by the presiding officer on September 25, 2002, is affirmed and modified as provided in this order.
2. The Findings of Fact Nos. 1 through 10 in the proposed decision are affirmed and a new Finding of Fact No. 11 is made as set out in section IV.2 of this order.
3. The Conclusions of Law are affirmed.
4. MidAmerican Energy Company shall file an addendum to the land restoration plan describing how it will comply with the plan during winter construction.

5. Motions and objections not previously granted or sustained are overruled. Arguments in the briefs not addressed specifically in this order are rejected, either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

6. This order shall become the final order of the Utilities Board. A petition for rehearing may be filed with the Board pursuant to Iowa Code §§ 478.32 and 476.12 within 20 days or a petition for judicial review may be filed pursuant to Iowa Code § 478.32 and Iowa Code Chapter 17A.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 4<sup>th</sup> day of December, 2002.